



City of Nashua
Planning Department
229 Main Street
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090
WEB www.nashuanh.gov

VARIANCE APPLICATION (ZBA)

PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 267 Main Street
Zoning District D1-MU Sheet 97 Lot 13

b. VARIANCE(S) REQUESTED:

To allow a restaurant with a drive-through service.

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM 190-15 (#113)

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): 267 Main Street Realty, LLC

Applicant's signature [Signature] Date 8-28-2018

Applicant's address By its attorney, Andrew A. Prolman, 20 Trafalgar Square, Nashua, NH 03063

Telephone number H: 603-883-8900 C: E-mail: aprolman@prunierlaw.com

b. **PROPERTY OWNER (Print Name)** 267 Main Street Realty, LLC

*Owner's signature [Signature] Date 8-28-2018

Owner's address By its attorney, Andrew A. Prolman, 20 Trafalgar Square, Nashua, NH 03063

Telephone number H: 603-883-8900 C: E-mail: aprolman@prunierlaw.com

***Agents and/or option holders must supply written authorization to submit on behalf of owner(s).**

OFFICE USE ONLY Date Received 8/28/18 Date of hearing 9/10/18 Application checked for completeness: CF

PLR# 2018-00162

Board Action

\$ application fee ☐

Date Paid Receipt #

\$ signage fee ☐

Date Paid Receipt #

\$ certified mailing fee ☐

Date Paid Receipt #

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- Granting of the requested variance will not be contrary to the public interest, because:** (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The proposed use is a Dunkin Donuts with drive-through service. This will not alter the commercial character of this area of Main Street, will not threaten public health, safety or welfare, and will not adversely affect any public rights.

- The proposed use will observe the spirit of the ordinance, because:** (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The site design and layout maintains the spirit of the ordinance without altering the character of the neighborhood or harming any public rights.

- Substantial justice would be done to the property-owner by granting the variance, because:** (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

The property has sat idle and rundown for many years. The general public gets the benefit of the development of a dormant property, while the applicant can deliver restaurant services. We see substantial justice for the applicant and the public.

- The proposed use will not diminish the values of surrounding properties, because:** (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The existing long closed and overgrown gas station adversely affects neighboring property values. The applicant expects an investment of well over \$1,000,000 with the property.

VARIANCE APPLICATION

Page 3

Address **267 Main Street**

5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

The small lot presents as a hardship for potential uses with parking and other site plan requirements. Prohibiting a drive-through is not fair and reasonable given the nature of Main Street and the character of the neighborhood. The proposed use is reasonable for this area of Main Street.


4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees **20** Number of employees per shift **6**
- b. Hours and days of operation **7 Days a week - 4:30 a.m. - 11:00 p.m.**
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors *****
- d. Number of daily and weekly commercial deliveries to the premises **2-3**
- e. Number of parking spaces available
- f. Describe your general business operations:
A Dunkin Donuts Restaurant.
* Traffic report to be filed.

- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:
Full site renovation. Site plans to be filed.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.


Signature of Applicant

8-28-2018

Date

Andrew A. Prolman, Esq.

Print Name

8-28-2018

Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- ☐ I will pick it up at City Hall
- ☒ Please email it to me at **aprolman@prunierlaw.com**
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1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 267 Main Street
Zoning District D1-MV Sheet 97 Lot 13

b. VARIANCE(S) REQUESTED:

To exceed maximum setbacks in D1 District.

c. LAND USE CODE SECTION(S) REQUESTING VARIANCE(S) FROM 190-16 Table 16-3

2. GENERAL INFORMATION

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

(Print Name): 267 Main Street Realty, LLC

Applicant's signature

Date 10-2-2018

Applicant's address By its attorney Andrew A. Prolman, 20 Trafalgar Square, Nashua, NH 03063

Telephone number H: 603-883-8900

C: _____

E-mail: aprolman@prunierlaw.com

b. **PROPERTY OWNER (Print Name):** 267 Main Street Realty, LLC

*Owner's signature

Date 10-2-2018

Owner's address By its attorney, Andrew A. Prolman, 20 Trafalgar Square, Nashua, NH 03063

Telephone number H: 603-883-8900

C: _____

E-mail: aprolman@prunierlaw.com

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OFFICE USE ONLY

Date Received 10/2/18 Date of hearing 10/23/18

Application checked for completeness: CF

PLR# _____

Board Action _____

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3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- Granting of the requested variance will not be contrary to the public interest, because:** (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The proposed use is a Dunkin Donuts with drive-through service. Exceeding the maximum set backs at this portion of Main Street will not alter the commercial character of this area of Main Street, will not threaten public health, safety or welfare, and will not adversely affect any public rights.

- The proposed use will observe the spirit of the ordinance, because:** (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The site design and layout maintains the spirit of the ordinance without altering the character of the neighborhood or harming any public rights.

- Substantial justice would be done to the property-owner by granting the variance, because:** (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

The property has sat idle and rundown for many years. The general public gets the benefit of the development of a dormant property, while the applicant can deliver restaurant services. We see substantial justice for the applicant and the public.

- The proposed use will not diminish the values of surrounding properties, because:** (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The existing long closed and overgrown gas station adversely affects neighboring property values. The applicant expects an investment of well over \$1,000,000 with the property

VARIANCE APPLICATION

Address **267 Main Street**

Page 3

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The small lot presents as a hardship for potential uses with parking, drive aisles, and other site plan requirements. That the maximum setbacks prohibit a drive-through is not fair and reasonable given the nature of this portion of Main Street and the character of the neighborhood. The proposed use is reasonable for this area of Main Street.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- Total number of employees **20** Number of employees per shift **6**
- Hours and days of operation **7 /days a week - 4:30 a.m. - 11:00 p.m.**
- Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors *
- Number of daily and weekly commercial deliveries to the premises **2-3**
- Number of parking spaces available
- Describe your general business operations:

A Dunkin Donuts Restaurant

* Traffic report to be filed.

- Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation:

Full site renovation. Site plans to be filed.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.

Signature of Applicant **for 267 Main Street Realty, LLC**

Signature of Applicant

10-2-2018

Date

Andrew A. Prolman, Esq.

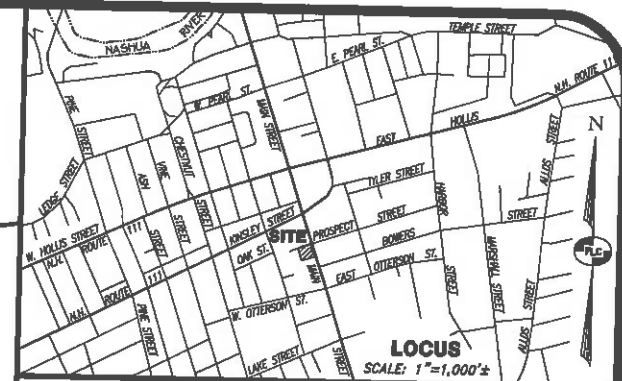
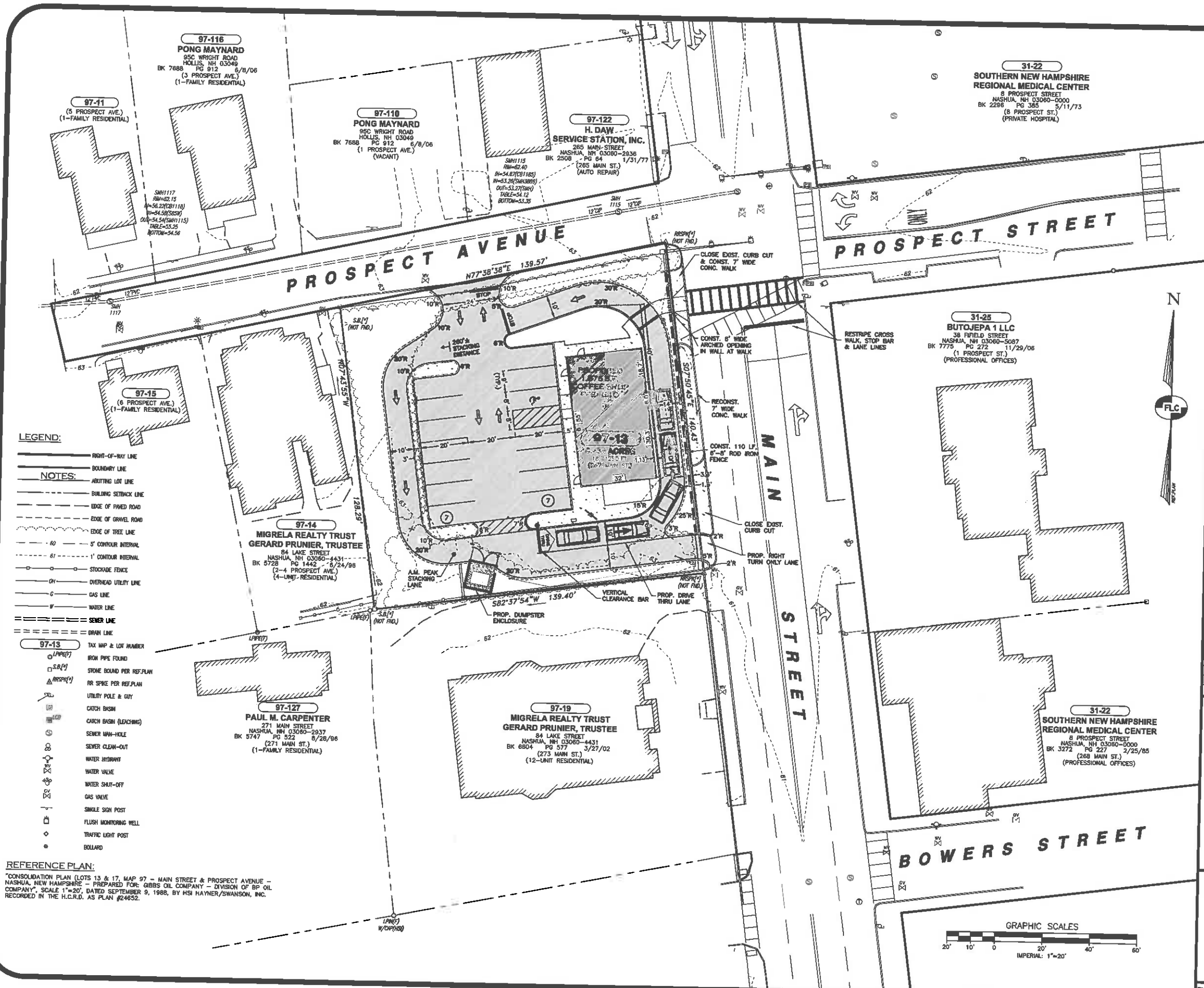
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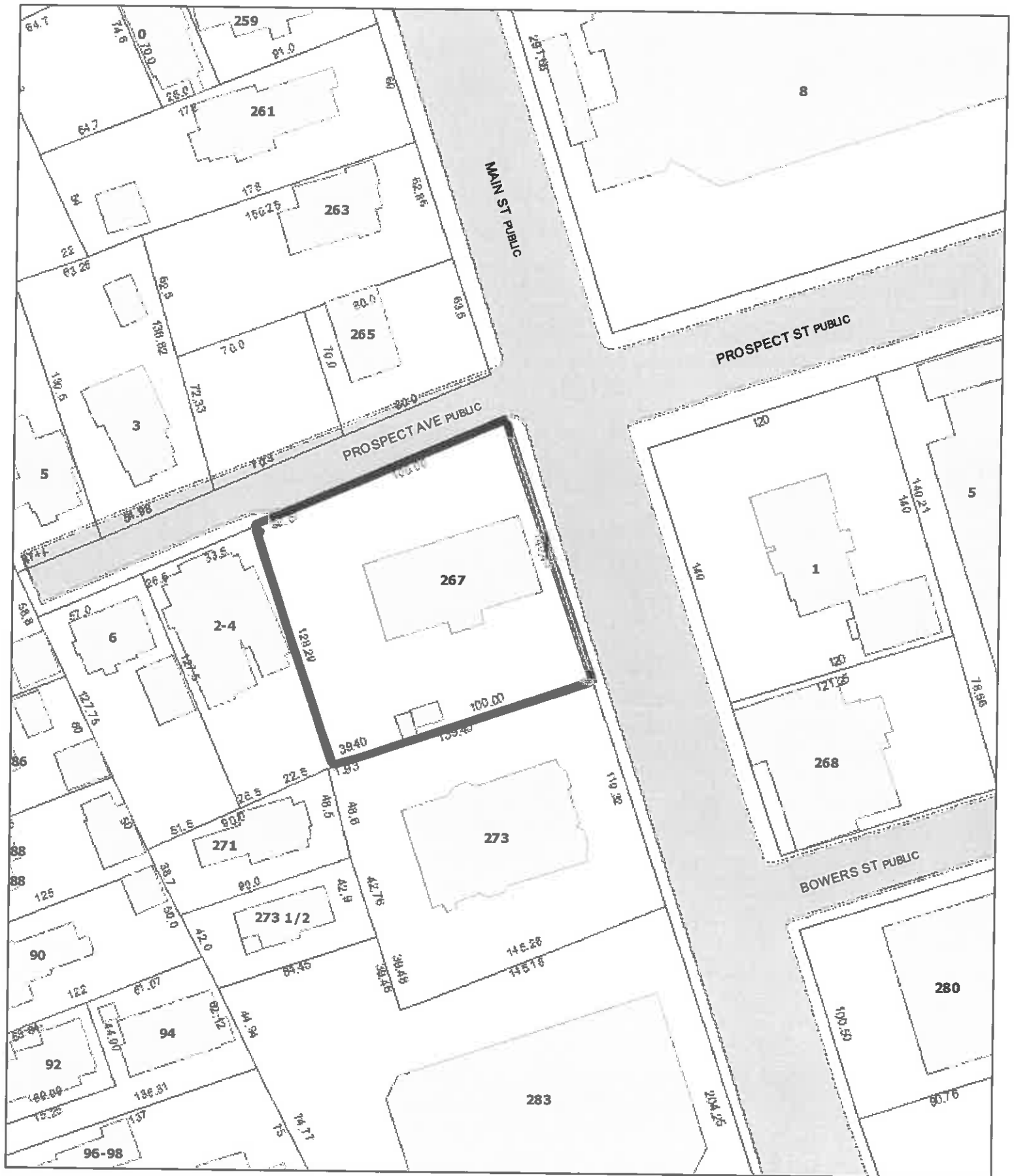
- THE APPLICANT AND THE OWNER OF RECORD FOR TAX MAP 97 LOT 13 IS 267 MAIN STREET REALTY, LLC, 13 CUMMINGS LANE, HOLLIS, NH 03048. THE DEED REFERENCE FOR THE PARCEL IS VOL. 9057 PG. 2968 DATED MARCH 22, 2018 IN THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS.
 - THE TOTAL AREA OF EXISTING TAX MAP PARCEL 97-13 IS 0.430 ACRES OR 18,712 SQ. FT. PER REFERENCE PLAN #1 CITED HEREON.
 - THE PURPOSE OF THIS PLAN IS TO DEPICT A PROPOSED 1,775 SQ. FT. COFFEE SHOP WITH DRIVE THROUGH SERVICE AND ASSOCIATED SITE IMPROVEMENTS ON TAX MAP LOT 97-13.
 - LOT NUMBERS REFER TO THE CITY OF NASHUA ASSESSORS MAP 97 AND 31.
 - ZONING FOR THE PARCEL IS THE DOWNTOWN 1 DISTRICT (MIXED USE) (D1MU).
- | D-1 ZONE CONVENTIONAL | REQUIRED | EXIST. 97-13 |
|-------------------------|----------|--------------|
| MIN LOT AREA | NONE SF | 18,712 SF |
| MIN LOT WIDTH | NONE FT | 139.57 FT |
| MIN LOT FRONTAGE | NONE FT | 267.86 FT |
| MIN LOT DEPTH | NONE FT | 134.4 FT |
| MIN FRONT SETBACK | 0 FT | 42.9 FT |
| MIN SIDE SETBACK | 0 FT | 43.8 FT |
| MIN REAR SETBACK | 10 FT | 78.5 FT |
| MAX. BUILDING HEIGHT | 90 FT | 10 FT |
| MAX. STORIES | 6 | 1.0 |
| CONSERVATION AREA | NONE | NA |
| OPEN SPACE FOR EACH LOT | NONE | 75% |
- THE SURFACE FEATURES AND BOUNDARY INFORMATION SHOWN WERE DEVELOPED FROM THE REFERENCE PLAN CITED AND A PRECISE FIELD TIE-IN SURVEY BY THIS OFFICE DURING THE MONTH OF APRIL 2018. HORIZONTAL ORIENTATION IS BASED ON THE REFERENCE PLAN. VERTICAL DATUM IS NASHUA CITY DATUM. REFERENCE BENCHMARK IS STANDARD USGS SURVEY DISK STAMPED "168 CONCORD USGS", LOCATED IN THE SOUTH SIDE OF THE BASE OF THE WAR MONUMENT ON THE SQUARE AT THE INTERSECTION OF MAIN STREET AND AMHERST STREET. THE NASHUA CITY DATUM ELEV=78.43 CONVERTED FROM NAVD88 (168.20 (NAVD88)-89.77=78.43(NASHUA CITY)).
 - JURISDICTIONAL WETLANDS WERE NOT FOUND ON THE SUBJECT PARCEL PER AN ON SITE FIELD INVESTIGATION BY CHRISTOPHER A. GUIDA, C.W.S. IN APRIL 2018 IN ACCORDANCE WITH THE "CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, TECHNICAL REPORT Y-87-1, DATED JANUARY 1987".
 - THE SITE IS NOT LOCATED WITHIN THE WATER SUPPLY PROTECTION DISTRICT.
 - THE SITE IS CURRENTLY SERVICED BY OVERHEAD UTILITIES AND BY MUNICIPAL SEWER AND WATER.
 - THE SUBJECT PARCEL IS NOT LOCATED IN A FLOOD HAZARD AREA AS DETERMINED FROM THE FLOOD INSURANCE STUDY (FIRM), HILLSBOROUGH COUNTY, CITY OF NASHUA, NEW HAMPSHIRE, COMMUNITY NO. 330067, PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, MAP NUMBER: 33011C0514E, EFFECTIVE DATE APRIL 18, 2011.
 - SOIL TYPE FOR THE ENTIRE SITE IS Ur - URBAN LAND.
 - THIS SITE PROVIDES FOR 14 PARKING SPACES INCLUDING 1 HANDICAP.

REV.	DATE	DESCRIPTION	C/O	DR	CK

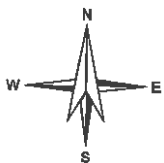
CONCEPTUAL SITE PLAN 3
TAX MAP 97 LOT 13
267 MAIN STREET
NASHUA, NEW HAMPSHIRE
 PREPARED FOR:
JOE CARVALHO
 42 MAIN STREET, NASHUA, NH 03064
 LAND OF:
267 MAIN STREET REALTY, LLC
 13 CUMMINGS LANE, HOLLIS, NH 03048

SCALE: 1" = 20' SEPTEMBER 17, 2018
 Surveying + Engineering + Land Planning + Permitting + Septic Designs

FIELDSTONE
 LAND CONSULTANTS, PLLC
 206 Elm Street, Milford, NH 03055
 Phone: (603) 672-5456 Fax: (603) 413-5456
 www.FieldstoneLandConsultants.com



267 Main Street



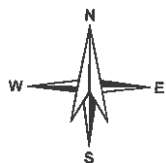
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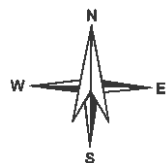
267 Main Street

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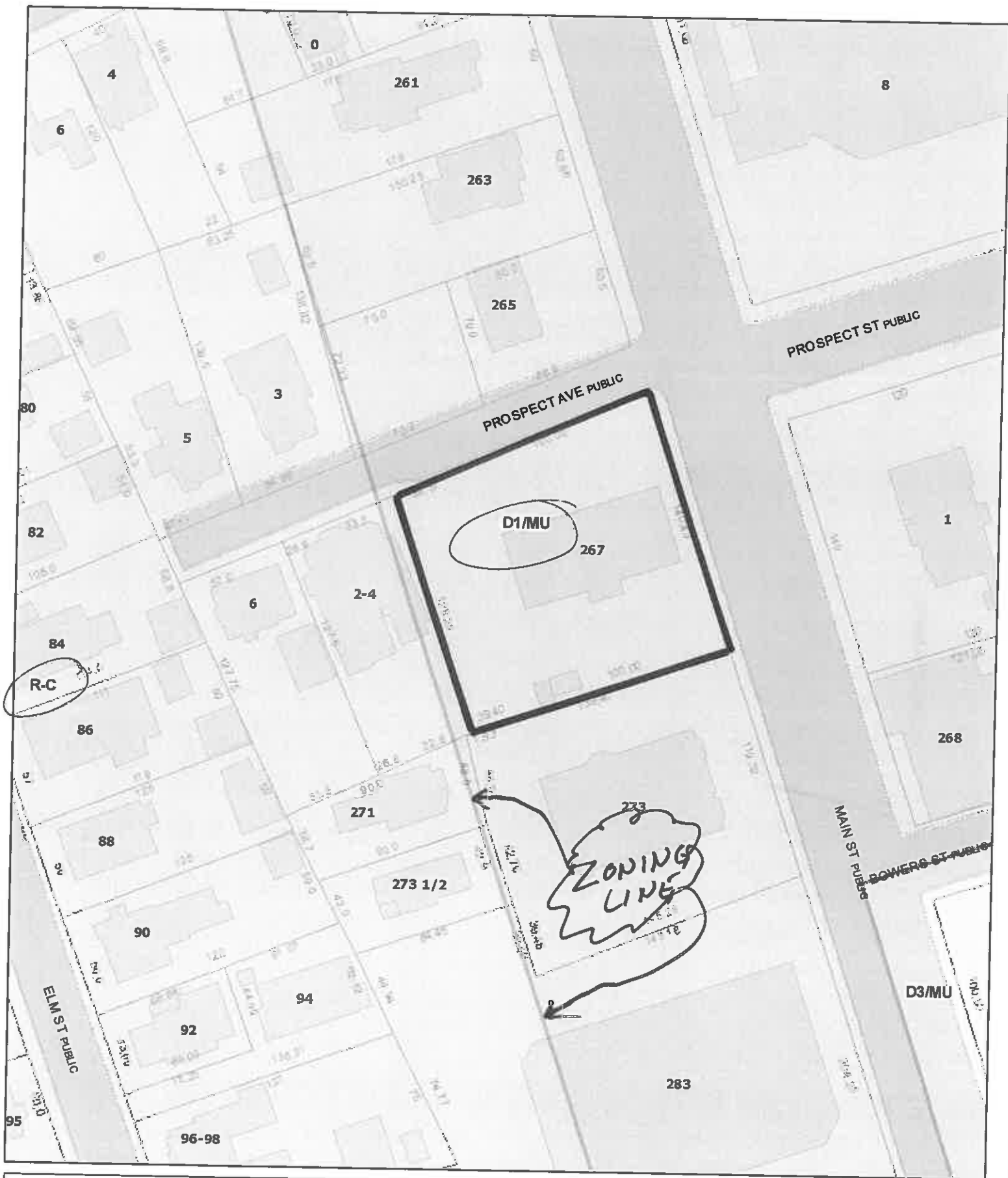


267 Main Street

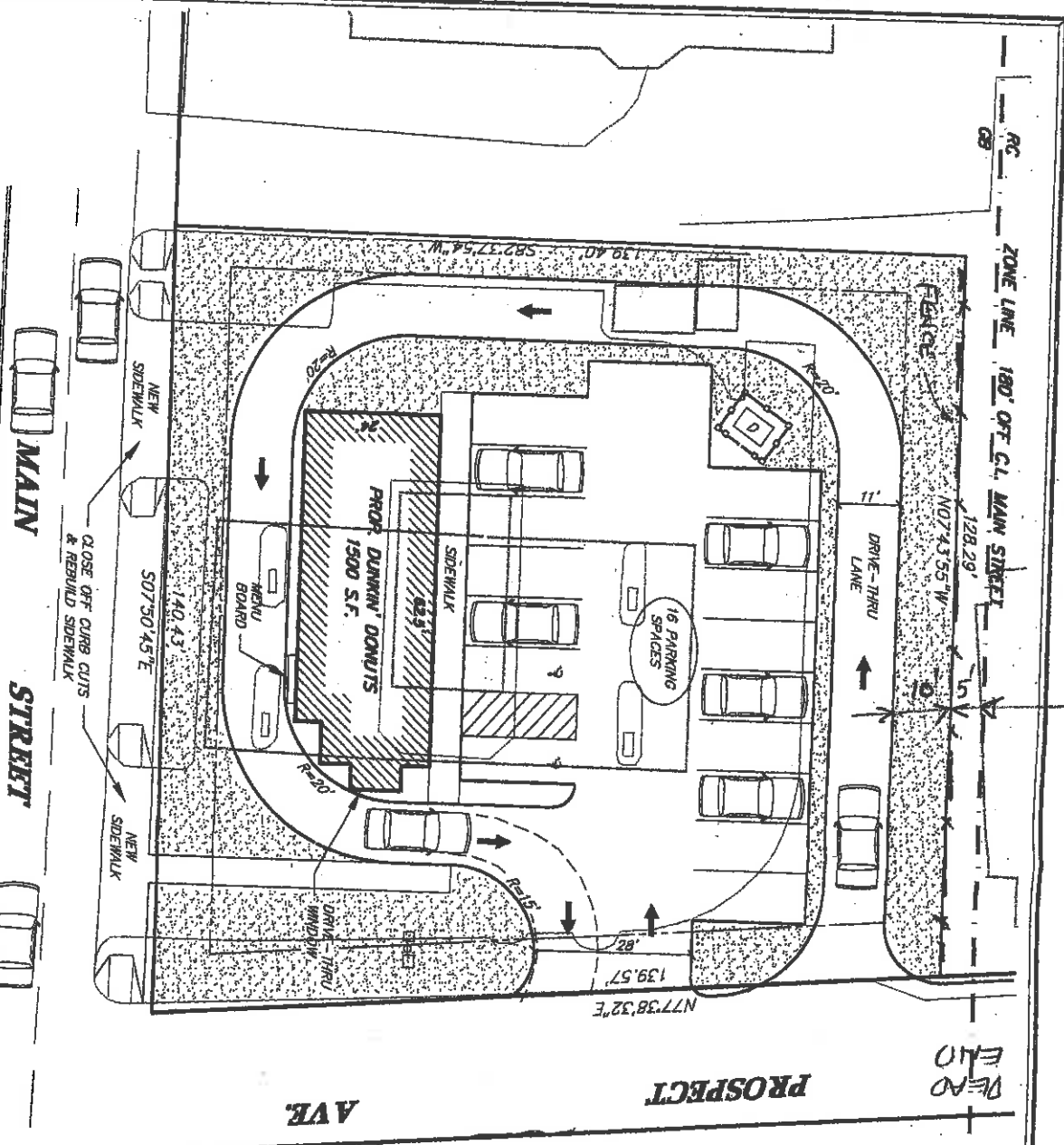


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* PLAN FROM 2001 APPROVAL



CONCEPTUAL SITE PLAN
DUNKIN' DONUTS
 MAP 97 / LOT 13
MAIN STREET
NASHUA, NEW HAMPSHIRE

PREPARED FOR:
 JOE CARVALHO
 48 MAIN STREET
 NASHUA, NEW HAMPSHIRE 03060
 (603) 899-8500

SCALE: 1" = 20'

DATE: JANUARY 30, 2007

MEP ASSOCIATES
Maynard & Paquette
 Engineering Associates, LLC
 Consulting Engineers and Land Surveyors
 28 East Pearl Street, Nashua, NH 03060
 Phone: (603) 883-9433 Fax: (603) 883-7227

JUST JUST

1

Mrs. Nessel asked Mr. Falk how the staff felt about this plan.

Mr. Falk said it is an improvement over what is there now, especially with the circulation. There is no net increase in intensity to the site. The Planning Board must see this plan also. If they have any problems or concerns about the site they will bring them forward.


MOTION by Mr. Duffy to grant the request to eliminate the condition from the 3/22/94 Zoning Board meeting stating that the exit from the car wash needs to be limited to the Main Dunstable Road curb cut.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

Postponed to 4/10/01

8. Mark D. & Michelle E. Hebert (Owners) L Main Dunstable Road (Sheet C Lot 262) requesting use variance to allow a 17-unit elderly housing development. R30 Zone.



9. Mobil Oil Corporation (Owner) Dunkin' Donuts (Applicant) 267 Main Street (Sheet 97 Lot 13) requesting the following: 1) special exception to allow a fast food drive-thru service, and; 2) special exception to encroach into residential buffer, 25 feet required - 10 feet proposed. GB/RC Zone.

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier said the proposal is to locate a Dunkin Donuts at this location. The Globe Plaza is being re-done and the Dunkin Donuts at this plaza will have to find a home.

He said they are proposing a traffic signal on Prospect Street. Prospect Avenue goes across the street. They are proposing the removal of the existing building and erect a

new building closer to the street. There will be walk-in service to the facility as well. Sidewalks will be provided into the building.

Atty. Prunier said they have gone to the Planning Board to discuss this plan because under the ordinance, because of the buffer, they are supposed to consider it. The end result of the evening's discussion was that it was within the purview of the Zoning Board of Adjustment and to let that Board handle it.

Atty. Prunier said Mr. Carvalho is willing to bring this site into character with Main Street so it will continue along with the facade of Main Street similar to what the Planning Staff and some of the Alderman are trying to do in this regard.

He said the two Main Street entrances/exits have been eliminated from the site, allowing this site to have a one-way circulation. The light will control the traffic.

The drive-thru is listed in the Table of Uses as needing a special exception. The improvement to the circulation will improve the traffic and pedestrian safety. They will not increase the traffic to this area because this is not a destination site. People go here on impulse. The site will be served by public water and sewer. It will not increase the drainage. With the architecture of the building matching the other part of Main Street, it will not be out of character with the neighborhood nor adversely affect property values.

He said the site as it exists today has a lot of asphalt. They will be adding a lot of landscaping. By allowing them to use the 10' buffer in the rear of the site with a 10' fence, it allows reasonable re-use of the property. It will add to the area. The use is permitted. It is within the spirit of the ordinance. Substantial justice will be served by bringing it back into character with Main Street.

Mrs. Nasset asked if the facility would have tables/chairs or if it was only a drive-thru.

Richard Maynard, Professional Engineer, Maynard & Paquette.
Mr. Maynard said there are several parking spaces. There will be some sit down. They do expect a considerable walk-in trade because of the hospital across the street and the businesses in the area. As the City improves to the south of City Hall, there will be more businesses and more offices.

Mrs. Nessel asked how the people walking into the facility won't be hurt by the drive-thru traffic.

Mr. Maynard said everybody has to stop at the drive-thru window to pick up their order. This takes anywhere from thirty seconds to 1 ½ minutes. He pointed out the location of the walkway for pedestrians. He said it should not take them that long to get into the facility.

Mr. Maynard said this site plan will allow fifteen vehicles to stack before you come out into Prospect Avenue. Prospect Avenue is a dead end street.

Mrs. Nessel asked what the present buffer at the site is with reference to the residential properties behind the site.

Mr. Maynard said the buffer distance is the same. They will put in a 6' high fence and adding deciduous trees that will grow higher than the fence to create an additional buffer.

Mr. Duffy asked how the pedestrian traffic from the hospital and from other sites on Main Street would access the site safely.

Mr. Maynard said the pedestrian traffic and the vehicular traffic don't tend to occur at the same time. There are sidewalks and crosswalks all around the site area. There is full signalization. At any site you have to walk across some sort of driveway to get into the building. He pointed out the walkway for pedestrians to enter the site.

Mr. Duffy asked where the main entrance to the facility

would be located.

Mr. Maynard pointed out its location and said it was in front of the two handicapped parking spaces.

Mr. Duffy asked if the Board were to deny the drive-thru if they would need to encroach into the buffer space.

Atty. Prunier said probably not, but there probably wouldn't be a Dunkin Donuts there either. The drive-thru is needed because of the investment made into the property. They are not encroaching any more into the site because all that is there now is a 10' buffer. They are trying to help that by adding the fence and the trees.

Mr. Duffy asked about deliveries to the site.

Atty. Prunier said deliveries are usually made around 5:00AM - 5:30AM when there isn't a lot of traffic downtown. They are on rollers and they just wheel them into the building.

Mr. Duffy asked if the trucks had enough room to turn their vehicles around.

Atty. Prunier said these are box trucks, not big tractor trailers.

Mr. Maynard said the same owner operates the Canal Street site and they have not seen any truck problems at that site because they come in at off peak hours so they are not interfering with the customers.

He said there is enough room for the truck to maneuver, off-load the product and then exit the site.

Mr. Jenkins said it so happens that there was a tractor trailer truck from Dunkin Donuts at the Dunkin Donuts site on Canal Street at 7:20AM on both yesterday and today.

Mr. Maynard said there isn't supposed to be.

Joe Carvalho, Franchise Owner, Dunkin Donuts. Mr. Carvalho

said there are two types of deliveries. Once a week there are gross goods that come in by tractor trailers. The every day deliveries that are done from shop to shop are done by small vans or box trucks. He said they are trying to work with their distribution center to get the tractor trailer deliveries moved to off peak hours in the afternoon. At this time they do deliver at 7:00AM. In the winter it does tend to be a problem because some of the sidewalks are covered with snow. He said there are smaller box type trucks that the distribution center will send out if spaces are tight. This site may be one of those.

Mr. Duffy asked if there were any discussions with the staff regarding pedestrian traffic.

Atty. Prunier said they did. They also discussed this with the Planning Board.

Mr. Duffy asked Mr. Falk to comment on the safety aspect.

Mr. Falk said all of Main Street has sidewalks on both sides. The site has a sidewalk going from the main sidewalk on Main Street to the front door of the building, which is typical of all commercial, retail, restaurants throughout Main Street.

He said the City is supportive of this because they are trying to get the City to have a more urban downtown look from East Hollis Street towards Globe Plaza. One of the things they are looking for is getting the buildings closer to the sidewalk.

He said the staff does not see a negative issue with the pedestrian safety and access. The place where people will cross is where cars will be stopping. There are numerous uses that have a drive thru where people have to cross somewhere.

Mr. Duffy asked about the delivery trucks parking on Main Street.

Mr. Jenkins said they probably could have a condition that

deliveries not be made by tractor trailers.

Mrs. Nasset asked if this had to go to the Planning Board again.

Atty. Prunier said "yes."

Discussion ensued.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Beverly Wrobleski, 3 Prospect Ave. Mrs. Wrobleski said her home is on the north side of Prospect Avenue.

Mrs. Nasset asked Mrs. Wrobleski to point to the approximate location of her property which she did.

Mrs. Wrobleski said she is not sure of the dimensions of Prospect Avenue, but she doesn't see how Prospect Avenue is going to handle this traffic. It is a narrow street. She said as it is the intersection is very dangerous, especially the vehicles heading south because after stopping at the light at Kinsley Street they are not expecting to have to stop again so quickly at Prospect Avenue and they frequently go through the red light.

She said she heard testimony that about fifteen vehicles could be accommodated in the drive thru lane. She said she didn't know what the peak number of vehicles is that would be expected, but if there were more than fifteen, she didn't know what that would mean to her. She asked how she would get out of her driveway, get to the light and go to work.

She said about five years ago she requested Mobil not to have any overnight deliveries because the way her house faces her bedroom windows are facing the gas station. They agreed not to have any deliveries between 11:00PM - 7:00AM. She said there was testimony that talked about changing

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

March 27, 2001

Page 23

this.

She said at one time there was parking on both sides of Prospect Avenue and that was abolished because there isn't room for a fire truck to get down the street. There is a disabled person in the next house confined to a wheelchair.

She said there are only four homes on the street and the one directly across from her has four apartments. One of the apartments has seven children. They use a sidewalk that she doesn't see on the plan. She wondered if the sidewalk was not going to be there anymore. This building is the one against the 10' buffer.

Mrs. Wrobleski said she didn't hear the hours of operation discussed. She also did not hear any reference to signs and the lighting.

She said there is already a stockade fence on the rear of the property. She asked if they were going to change the fence.

Mr. Duffy asked Mrs. Wrobleski how long she had lived in the neighborhood.

Mrs. Wrobleski said she has lived in her home since 1978. Her in-laws had previously lived there from 1945.

Mr. Duffy asked what was at the site before the Mobil station.

Mrs. Wrobleski said at one time, many years ago, there was a home on the site. Then it became a gas station.

She said that she also wanted to mention that DAWS Service Station has been granted five parking spaces by the City. She pointed out the location of these spaces. She said it appears they will lose these spaces, therefore impacting their business.

Mrs. Nessel asked Mr. Falk if he knew anything about this last statement concerning the parking spaces.

Mr. Falk said he was not aware of this. He said he didn't know if this was a private agreement.

Mr. Maynard said there are "no parking" signs all along the street.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said they are only going a short distance on Prospect Avenue. They are not going into the neighborhood part of the street. As far as any of the residents coming out of their street, there is a break in the traffic because of people waiting for their order and the traffic light controls the traffic as well. If there were parking on both sides of Prospect Street, cars can still go through. The street is 25' wide. He said there are no parking signs on Prospect Avenue so he did not know how DAWS gets the spaces that were addressed in previous testimony.

He said the store will be closed from 11:00PM - 5:00AM.

He said the Planning Board will be addressing the lighting. The lighting is directed downward and can't shine in anyone's windows.

Mrs. Nessel asked Atty. Prunier if he had any knowledge of a sidewalk that Mrs. Wroblewski mentioned was used by pedestrians that did not show on the plan.

Atty. Prunier said he had no knowledge of this, but he is sure that the Planning Board will make sure that if there isn't one, that there will be one along Prospect Avenue.

Mrs. Nessel said she felt the Dunkin Donuts was a better use than the gas station, especially if it is going to be designed that is becoming to the City of Nashua.

MOTION by Mrs. Nessel to grant the special exception for the fast food drive-thru with the following condition:

Hours of operation 5:00AM - 11:00PM.

The use is listed in the Table of Uses. It will not create undue traffic congestion or unduly impair pedestrian safety. It should not be any different than that which was noted by the gas station. It will not overload public water, sewer, drainage or other municipal systems. There are no special regulations. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

MOTION by Mrs. Nessel to grant the special exception for the 10' buffer. This is listed in the Table of Uses. It will not have any affect on traffic congestion. It will not have any affect on public water, drainage or sewer. There are no special regulations. It will not change the integrity or be out of character with the neighborhood and it will not be detrimental to the health, morals, or welfare of the residents.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

10. **City of Nashua (Owner) Center Median Strip on D.W. Highway, northeast of Pike Street; requesting special exception to work within the wetlands and wetland buffer of an "other" wetland to repair and replace existing manholes on the City's combined sewer collection system. RA Zone.**

Joe Mulledy, 9 Cole Street, Salem, NH. Mr. Mulledy said he is an engineer with the City of Nashua - Department of Public Works.

Mr. Mulledy said this work is part of the City's sewer separation program. He said during their field investigations to support the design of the project, the consultants discovered three manholes within the median

to lose a bedroom in the existing house in order to get to the bedrooms that will be upstairs. He said the spare bedroom that they have now is too small for two kids to share so they need another bedroom. He said they have a baby and they are expecting another. This will increase their living space to better suit their growing family.

He said by granting the variance, their addition will improve the neighbor's property values.

He said the space where the addition will be built is currently his driveway and a couple of feet of grass and their yard. His driveway is 24' wide. This is where they park their vehicles now. He said they are going to be going 2' beyond that. The driveway goes to the back of his house.

SPEAKING IN FAVOR

No One.


SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the variances to encroach 3' into the 25' front yard setback, encroach 15' into the required 25' rear yard setback, and to exceed the maximum building area, 20% allowed, 22% requested to construct an attached 24'X26' garage with room above at 4 Gruen Lane. There is a hardship. The lot is irregularly shaped. It is a corner lot with two front yard setbacks. The variance will allow reasonable use of the property. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It will not be contrary to the public interest. Substantial justice will be granted by granting the request.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

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3. Mobil Oil & Migrela Realty Trust (Owners) 267 Main Street LLC (Applicant) 267 Main Street, 2-4 and 6 Prospect Avenue (Sheet 97 Lots 13, 14 & 15) requesting the following: 1) special exception to allow use of premises

for medical office and/or professional and business offices, and the following variances: 2) minimum open space, 25% required - 15% proposed, and 3) variance to encroach into a buffer between a commercial zone and a residential zone, 25 feet required - 0 feet proposed. GB & RC Zones.

Voting on This Case:

Susan Douglas
Thomas Jenkins
Sean Duffy
Jay Coffey
Donald Berthiaume

Atty. Morgan Hollis, 39 E. Pearl Street, Nashua. Atty. Hollis said he is representing 267 Main Street, LLC. There are two owners of the properties and there are three properties involved. He said Exxon Mobil Oil Corporation owns the lot located at 267 Main Street and Migrella Realty Trust is the owner of the other two lots - 2-4 Prospect Avenue and 6 Prospect Avenue.

He said they are going to withdraw the variance request for the open space requirement as they will be able to meet this requirement.

He said the site is located at the corner of Main Street and Prospect Avenue. Prospect Avenue is directly opposite Prospect Street. At the corner of Prospect Street and Main Street is the hospital. At the corner of Prospect Avenue there is a former gas station which is now an automobile service center, H. Daw and a former gas station which is currently unused.

He said they are proposing to take the corner lot at 267 Main Street and the next two lots in on Prospect Avenue. At this time one lot has a four-family house with a parking lot behind it and the other property at the end is a single-family house with a garage and parking lot behind it.

Atty. Hollis said they are proposing to consolidate the three lots and demolish all three buildings. A new building would be constructed, which will be a two-story professional office building. The building will have 8,000 square feet, approximately 1,900 square feet on the first floor will be dedicated to retail - a coffee shop, a florist shop on the corner. The rest would be medical or professional office building.

He said the zone line of the property is to the west of the Main Street lot and it is on the easterly portion of the 2-4 Prospect Avenue lot. As a result most of the parking lot is located within the RC Zone. The medical office building and a portion of the parking lot are within the GB Zone. A medical office building is permitted in the GB Zone, but because of the parking in the RC Zone they need to apply for the special exception to allow the use.

Atty. Hollis said that under the zoning ordinance if you have a commercial district abutting a residential district you are required to have a 25' buffer between residential zone line and commercial use. He referred to the dotted line on the plan which indicated where the two districts are. Under this scenario they would be required to have a 25' buffer right in the middle of the project, which makes it unfeasible. Therefore, they are requesting a variance for this issue.

Atty. Hollis said the special exception use which they are requesting is medical and professional office. They are found as permitted by special exception under #11 & #13 in the Zoning Ordinance.

He said the proposed use is in keeping with the character of the neighborhood. Across Main Street there are medical facilities, professional office building, a gas station, a current gas station, an apartment building. He said the Board is familiar with what is up and down Main Street. To the rear are the two uses which he has described. He said across Prospect Avenue there is a single-family house, an empty lot and then another residential use. To the south of the proposed site there are an apartment building, multi-family apartment building and a smaller building on a smaller lot. He said to the rear of the property (westerly), Prospect Avenue dead ends and does not continue onto Elm Street. He said currently there are a multi-family building on one lot and a single-family on the other lot. The access to the parking lot to both buildings is at the end of Prospect Avenue and it comes right along the fence and it goes into the parking area behind the two buildings. It basically takes up the entire back yard. It has been there for at least thirty years.

He said they think the proposed use will be in keeping with the character of the neighborhood. This will be a complete re-development. They will be 10' or more buffers along the westerly line and southerly line. They are proposing stockade fencing along the westerly and southerly line which does not exist today.

They are going to be upgrading the landscape buffers which are minimal today, except for some large trees in the southwest corner. It will be a professionally landscaped area. It will be an attribute to the neighborhood. The stockade fence will more clearly delineate the difference between the neighborhoods and keep out headlights and blowing materials that might come off of Main Street if there were a strong wind.

He said they think it is in keeping with the Main Street Plan, which is to have buildings front on Main Street and have the parking lots behind it. He gave the example of Citizens Bank across from City Hall and the old "Globe Plaza."

He said the residential neighborhood on Elm Street is separated by virtue of there being no cross streets and will be increasingly separated by the proposed fencing and landscaped buffer, which does not exist today.

Atty. Hollis said they don't believe that granting the special exception will create an adverse impact on any drainage, sewer, or water. In fact, the existing parking lot doesn't have modern storm water drainage system. When it rains, it runs off and puddles and floods and sometimes goes onto the neighbor's property. He said they have to demonstrate that there will be a storm water detention system that will go into the City sewer system so there will be no runoff on the neighbor's property. This will be an improvement. He said there is adequate capacity for water and sewer in the area.

He said the proposed use will not adversely affect or impair pedestrian safety or vehicular traffic. He presented a traffic report that was done by Steven Parnaw. He said it would be submitted to the Planning Board. He said right now Prospect Avenue is a fairly narrow right-of-way and the service station or others sometimes park their cars on it. He said it's kind of a private street. The applicant will be dedicating some land and widen up the street which will allow a more direct offset to Prospect Street. They will probably re-align the crosswalks and the crosswalk lights if the Planning Board suggests it. Everything will be more directly aligned. He said they believe this will improve the flow of traffic. There will be a right turn out. There will be a separate dedicated left turn lane. That is two lanes where right now there is barely one.

He said the rest of the pedestrian issues will be contained on-site in that the entranceway will be to the rear of the building.

There will be a front entranceway, but there are sidewalks proposed. Main Street in this area is pedestrian friendly. There is a stop light right at the corner and with a re-alignment it should not have an adverse impact on pedestrian safety.

He referred the Board to the traffic study. He said on Page 4, just above Table 2, the experts reports states a comparison between Table 1 and Table 2 demonstrates the proposed development will generate less vehicle trips than the former uses of the site. On the following page it goes into the traffic mitigation. Right now there is an in and an out on the existing site. They are going to close off the in and out on Main Street so access to the site will only be through Prospect Avenue. Prospect Avenue will be widened and re-aligned. The existing traffic signal will be reconfigured because of the re-alignment.

He said on Page 6 it states the traffic mitigation that is included with the preliminary site plan more than offsets the impacts involved from an overall traffic operations standpoint. He said they believe it meets the criteria that there will be no adverse impact on traffic.

Atty. Hollis said as far as the variance is concerned, the use is not contrary to the public interest. It is in the public interest because they will be cleaning up the gas station site, a site that has some issues with regard to environmental matters, which will be addressed in the re-development.

He said they will be providing more than adequate parking under today's standards. Parking for this type of use would normally require 31 spaces and they are going to provide 44 spaces. There will be upgraded landscaping.

He said they will be removing residential from two lots so there really is no need for the buffer. The buffer is to protect the residential users. Under the ordinance the buffer called for is 25' or 10' if they are going to provide a fence. He said they are providing a fence. They feel there is no need for this, but what they see is more likely a transference of this type of buffer. It really should be between users, not between districts. They are agreeing to transfer the buffer down between the users and implement it at their west and south sides. He said they think it is consistent with the spirit of the zoning ordinance.

He said substantial justice to be done. It will allow a site to be re-developed that is currently an eyesore and has

environmental issues. It will allow an upgrading of the neighborhood in terms of landscaping. It will allow use of the three properties without the need for establishing an unusual buffer stuck right in the middle.

He said granting the variance will not adversely affect the value of surrounding properties, whether the buffer is in there or not. It doesn't affect the residential properties because they are going to be a parking lot. It won't affect any of the abutters because it is a good 150' to the nearest neighbor that would have any impact. There would be a parking lot on the other side of the buffer so it makes no sense to have it there.

Atty. Hollis said the variance is needed to enable the applicant's proposed use of the property given the special condition of the property. They can't develop this site and leave a strip in the middle. The benefit sought by the applicant can't be achieved in any other way. He said the parking lot can't be reconfigured and leave the strip in the middle and make sense out of it. It would be unreasonable. It would mean pushing the parking up against the building and putting all the landscaping right in the middle, which doesn't make sense. It could also mean you'd be shaving your setbacks in the back where you don't really need to. It is better to take it and spread it around the lot.

Mr. Jenkins asked how many days a week the building will be open.

Atty. Hollis said it is a medical office building so it will probably have typical patient hours, but it could be used seven days a week. Doctors come and go, but he doesn't think their patient hours would be seven days. The retail portion is a coffee shop that in all likelihood will be an intense use on the weekend.

Mr. Jenkins asked if the coffee shop would be something like a Dunkin Donuts.

Atty. Hollis said it could be, but there would be no drive-thru. He said they don't have a prospective tenant lined up. This area is pretty slow on Saturdays and Sundays.

Mr. Duffy asked if they would mind a stipulation that there be no drive-thru commercial use.

Atty. Hollis said this is correct.

Mr. Duffy asked the distance from the back parking lot that is in the RC Zone and the back property line.

Atty. Hollis said at its narrowest point it is 10'. If the zone line were along the property line they would have a 25' buffer in the back or it could be reduced to 10' with a fence. He said he has seen others come to this Board for that reduction. He said the ordinance says "between the zone lines", not between the uses.

Mr. Duffy asked the size of the retail space.

Atty. Hollis said about 1,900 square feet, about 1,400 for the coffee shop and 500 for the florist shop.

Mr. Duffy said in looking at the traffic report it states the restaurant will create almost 1100 trips a week. If there are 44 spaces, the office and medical is only turning over five times a day. He said this doesn't make any sense to him.

Atty. Hollis said the difficulty with the ITE trip standards is that if this were a stand-alone restaurant, that would be the kind of trips it would generate and it is put into a category. However one wants to describe it - as an accessory or part of a medical office building, you have to go with the ITE generation category. It's not going to be a sit-down restaurant. Even with all the numbers that have been used, it shows that given the past use, they are proposing a less intensive use on the site.

Mr. Duffy said if there are only 22,000 trips a day down Main Street, that's about 5% of the use from this one site. He said if they are putting the traffic that used to be in the front of that property deeper into the neighborhood, the 10' buffer in the back may not be sufficient as compared to a 25' buffer.

Atty. Hollis said that buffer could be added, but you would impact the number of parking spaces. He said they could eliminate the entire back row of parking and put in a larger buffer, but what would it accomplish. They want to have a balance. They want to make sure there is adequate parking. Doctors tend to have a cross flow where at one point somebody is coming for their 10:00 appointment and leaving from the 9:00 appointment. Then it will be quiet for a while and then it's busy again.

He said with the stockade fence and the new buffer and the formal

landscaping on both edges they believe they are going to provide a better buffer than what presently exists and an adequate buffer for the residences along the back line. He said he didn't think adding another 15' of landscaping will make that much difference. Most of the entryway is in the GB Zone. If people are going to come to this restaurant they are going to loop in and park in as close a spot as possible. The back entry is there to provide a second means of access and to provide better flow. The retail users are going to go up front and the staff probably are going to come in the back and park in the back row.

Mr. Berthiaume referred back to the traffic study and asked if there is another classification that would be reflective of a weekday AM peak hour trips.

Atty. Hollis said he doesn't know the answer to this. He would have to leave that to the Traffic Engineer. He said he assumes that he understood exactly would be going in - a Dunkin Donuts' type of facility. He has to use the category that he knows accommodates that so that the numbers are represented accurately.

Mr. Duffy said it just doesn't seem that the numbers are reasonable and Atty. Hollis said he can't disagree, but on the other hand it may be that the total over-all daily volume is less than what the numbers reflect. It is just at certain peak times they may be more. He said his client has taken this into account because the medical office hours will tend to come after the rush. Also, there is going to be some walk-in traffic.

Mr. Currier asked if this is going to be part of Southern New Hampshire Medical Center.

Atty. Hollis said it is a completely independent owner.

Mr. Currier referred to Note #7 on the design plan. He said that 25% open space is required. He said Atty. Hollis noted that this is going to be provided. The plan doesn't have any amount provided and it states 20% is required. He said he wanted to clarify that it is 25%.

Atty. Hollis said the plan has 20% required under the GB Zone and providing 28%. Under the RC Zone it is 25% required and 27% is provided.

Mr. Currier asked how the storm water runoff is being treated.

Jim Petropulos, Hayner/Swanson, 3 Congress Street, Nashua, NH. Mr. Petropulos said the present site is paved. There is some local collector drainage, but it's piped into the drain line that runs down Prospect Avenue. The four-unit building and the single-family house have a large parking area behind it. There's a single leaching catch basin behind there. He said he doesn't know the age or condition of it, but it's probably dated and doesn't meet today's standards.

He said he had a telephone conversation with one of the abutters this week. He said he complained that there were some drainage issues behind the property. He said they will help this situation because the perimeter of their entire paved area will be curbed so there will be no sheeting action across the property. He said they will take advantage of the good sands that are there and do an under pavement recharge system located in the center of the site. He showed where this would be located. There will be an outfall into Prospect Avenue for any peak storm.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Paul Carpenter, 271 Main Street. Mr. Carpenter said his property is located behind the apartment building. He showed where it is on the plan. He said he abuts the addresses of 2-4 Prospect Avenue and 6 Prospect Avenue right into the corner of the buffer zone. He said as it is now his master bedroom is 8' off the stockade fence. He said this is going to be increased 10', yet the applicant wants to take all of what is here and increase the traffic and everything else. He asked where the snow would be plowed. He said it will go into the buffer zone and it will melt into his cellar.

He said he has been in his home for 40 years and he's been nothing but abused by every zoning situation or change that has gone on. He said he has a Main Street address, but he lives off of the right-of-way. He asked the Board to consider that there is a residence that abuts the property from the back all the way to the front of his property right up to the right-of-way. The right-of-way goes around the apartment building. There are three houses back here that are never considered for anything.

He said if the City of Nashua believes in having 25' as a buffer between parking lots and residential users he would like to have that stand.

Mr. Jenkins said the parking lot that Mr. Carpenter was pointing out has an actual setback of 10'. If there was something to be constructed in the GB Zone, it is 10', which is what is being met by law. Between the RC Zone and the GB Zone there is 25' to separate the residential from the commercial. As far as building something on the piece of property, the setbacks are met.

Mr. Jenkins asked Mr. Carpenter was there when the building where the parking lot is to be situated was a medical building.

Mr. Carpenter said he was. He said prior to that it was strictly a two-family house. He said he had gone to a couple of Zoning Board hearings because they wanted to change it into a medical office and then back again into an apartment building. At that time they also received a variance for the parking because there wasn't enough. They said they would remove the snow, not plow it up against the fence, but as things go nobody follows up. He just wants to make sure that he gets full consideration.

SPEAKING IN FAVOR - REBUTTAL

Atty. Hollis said they do not have a problem if the Board wants to stipulate that there be no snow piling on the southerly side adjacent to Mr. Carpenter's house. There are enough areas where the snow can be put or have it removed.

He said Section 16-244 states that screening and buffers shall be required in any industrial or business district which adjoins a residential district. The strip shall be at least 25' in width, except where abutting a residential use in the RB & RC Districts, in which case the width may be reduced to 10'. He said it goes on to describe the screening/planting of vertical habit in the center not less than 3' in width and 6' in height at the time of occupancy of such lot. Individual shrubs or trees shall be planted not more than 3' on center and shall thereafter be maintained by the owner so as to maintain a dense year-round screen. He said if the Board wants to condition that the 10' buffers should be as required under this section they would be stipulating something that not necessarily would be required by the Planning Staff. He said they are only proposing to remove the buffer in the middle and putting it on the sides as the ordinance allows. He said they will also have a fence. He said

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he believes the stipulation, the buffer, and the fence will protect Mr. Carpenter.

He said the right-of-way, which is Mr. Carpenter's access also gives access to the abutting property. With the development plan it will remove any traffic that might come through that could otherwise access his client's property.

SPEAKING IN OPPOSITION - REBUTTAL

Mr. Carpenter said there had been a big old building on the site which was a church. It was leveled and it became a Gibbs Gas Station and then another gas station and then the Exxon/Mobil station. He said there was never any access to that right-of-way by the applicant's site. He said it is the right-of-way for the houses in the back.

Mr. Duffy said he thinks the stipulations should be included in the motion. He said he doesn't have any problem with the special exception. In reality when the new zoning ordinance is approved and the new map comes out this will be one GB Zoned lot.

Mr. Jenkins said if you look at the lots in the area as a whole they won't find any 25' setbacks. It is probably an average of 10'.

He said the proposed site requires 31 spaces and they are providing 44 spaces. He feels they will all be used. He said he would rather see additional parking spaces rather than an additional 15' of empty space that is probably going to gather trash.

He said the applicant is also willing not to plow snow against Mr. Carpenter's property line - which they have agreed to as a special condition.

Mr. Currier said the building is up front as the City's Downtown Master Plan calls for. He said when the last gas station was operating there were cars going in and out and it was tough getting in and out of the two driveways.

Mr. Jenkins said the building will be less intrusive on the neighbors than a gas station open 24/7.

Mr. Currier said they have testimony from the engineer that it is going to be curbed and there is going to be no runoff. He is in

favor of two signs on the southerly side. If someone is violating it, the Police are going to get a phone call and enforcement is easy. He said he didn't think that flooding is going to be an issue.

Mrs. Douglas and Mr. Coffey both said they don't have a problem with the proposal.

Mr. Berthiaume said some of the questions/concerns he had were answered tonight.

MOTION by Mr. Duffy to grant the special exception to allow the use of the premises for medical office/professional business offices and minor retail at 267 Main Street. The use is listed in the Table of Uses. There has been adequate testimony that there should be no overload of public water, drainage, sewer, or other municipal systems. There are no special regulations to be fulfilled. There should not be an impairment or integrity be out of character with the neighborhood or the prior uses on the property which have been numerous. It is not detrimental to the health, morals or welfare of the residents. There will be a sidewalk system to the front with appropriate crosswalks being installed so pedestrian traffic is vastly improved. The information presented indicates there should not be an increase in the traffic due to these uses. The special conditions are that the 10' buffer be maintained on the west and southerly sides of the property according to Section 16-244 and that the snow shall not be directed to the southerly side of the property.

SECONDED by Mr. Curry.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Jenkins to grant the variance to encroach into the buffer between a commercial zone and a residential zone, 25' required, 0' proposed at 267 Main Street. The variance is needed for the use of the property, given the special conditions of the property. They have an RC Zone directly abutted by a GB Zone and the fact that is on Main Street itself. The property in the GB Zone has been used for commercial purposes in the past. The 10' setback required in the GB Zone is adequate for protection of the property owner's in the GB Zone. This is within the public interest. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be met by granting the variance.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

MINUTES

10/12/04

There was discussion about who asked the questions on Page 11, 12 and it should be shown that Mr. Currier made them.

MOTION by Mr. Duffy to approve the minutes of 10/12/04, as amended, and place them on file.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

Regional Impact

It was discussed that the case for Pennichuck required the Town of Merrimack to be notified.

ADJOURNMENT

Mr. Jenkins called the meeting closed at 7:15PM.

Susan Douglas
Clerk

lt
Taped

Mr. Duffy said there are two letters that are in favor that were mentioned earlier tonight.

SPEAKING IN OPPOSITION


No One.

Mr. Currier said he agrees with this project. He said it's a good location. He said Mr. Slattery has a good track record with other projects that he's seen come through.

MOTION by Mr. Duffy to approve the special exception to allow a 21-unit elderly housing building on a portion of an existing lot at 120 Coliseum Avenue. This use is listed in the Table of Uses, Section 16-227 and Section 16-467. It should not create undue traffic congestion or unduly impair pedestrian safety. A traffic study was provided that shows minimal usage in this area. It's at the end of a dead end street along an expanded infrastructure that includes similar and combined multi retail uses. It should not overload public water, drainage, sewer or other municipal systems. The special regulations are fulfilled in that there are amenities - retail shopping, a park, etc. It should not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents. There are similar uses along Coliseum Avenue. The special conditions are all met in that the applicant has exceeded the elderly housing density bonus requirements. There is proximity to support services. The density does not exceed the 75 units per acre criteria. There is more than enough open space - 66% versus the 20% that the applicant could have requested. The parking is at 1.75 spaces per unit.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

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2. Mobile Oil Corporation (Owner) Armand Sancier (Applicant) 267 Main Street (Sheet 97 Lot 13) requesting the following special exceptions: 1) to allow a 2-bay automatic car wash with exterior car vacuums, and 2) to allow for a reduction of the 25' required buffer strip adjoining a residential district to not less than 10'. GB/MU Zone.

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said he is representing the applicant, Armand Sancartier. He said Mr. Sancartier is present. Also present are Mark Fougere, Mr. Sancartier's planning consultant. Bob Cronin or Jones & Beach Engineers (the project engineers), Tim Goldie, Traffic Engineer associated with Steve Parnow's office in Concord, and Frank DeTomaso who is with Carwash Services of New England (an equipment supplier). He said they are all here to answer any questions the Board may have.

He referred the Board to three sets of plans or pictures that were set up on display. He said they were also handed out a packet with a few different documents in it.

He said the proposal is for a special exception to allow a car wash at 267 Main Street in a GB/MU Zoning District. The application also had with it a request for a reduction of the 25' buffer strip between zone lines, but they are withdrawing that request. He said they are not seeking to do any buffer reduction.

Atty. Westgate said the first item in the packet is a plan with pink and yellow highlighted areas.

He said this is the site of the old Mobil Gas Station, which is no longer in operation. It is an eyesore at the present time. It is located on the south side of Prospect Avenue and west side of Main Street. He said he highlighted in yellow a variety of other uses on this section of Main Street, which are effectively automotive related uses. He pointed out at the corner of Main & West Hollis is Tilden Truck & Auto. He said there is a parking lot just south of the restaurant just below West Hollis Street. Southern New Hampshire Medical Center recently established a parking lot across from that other parking lot. Daw's Service Station is right at the corner of Prospect Avenue. He mentioned other facilities that were related.

He said this section of Main Street has four lanes of traffic. The on-street parking stops effectively right outside the front door area of the Persian Rug Gallery and across the street it stops at the Coronis Cleaners Block. From there down there is no on-street parking on Main Street.

Atty. Westgate said the property has about 18,700 square feet. He said it was a gas station or service station since the 1960s - at least based on the research he was able to do. He said presently it has two curb cuts on Main Street. It's always been accessed off Main Street. When the gas station was last operating it had eight fuel pumps.

He said the site has come to this Board a couple of other times in recent years. In 2001 the Board granted a special exception to allow a fast food restaurant - a Dunkin Donuts on site and also granted a special exception for some buffer encroachment into the 25' zone that he mentioned earlier. He said the Dunkin Donuts was never built.

He said about a year ago the Zoning Board granted a special exception to permit a medical/professional office building in the RC Zoned portion, but that never came to fruition.

Atty. Westgate said the intersection of Prospect Street/Prospect Avenue/Main Street is signalized.

He said the zone line runs just to the west of the property. He referred the Board to the site plan, which was the last plan in their packet. Beyond them is the RC Zone to the west. Along Main Street is the GB Zoning District.

He said this would be a two-bay automated car wash with outdoor vacuums and five parking spaces. He said the entrance for the car wash would be on the south side of the building parallel to Main Street. The exit would be on the north side of the building. The building will have the appearance of a second floor. The building would be just a few feet back from the setback line. The entrance and exit would be parallel to Main Street, not in coming on an east or westerly direction. Access to the site would be from Prospect Avenue coming in the same curb cut. The two curb cuts on Main Street would be eliminated. The sidewalk will be filled in so that there's a full sidewalk along the frontage of the property. They are proposing the hours of operation are from 6:00AM - 10:00PM. The gas station operated from 6:00AM to midnight. The Dunkin Donuts had proposed their hours of operation as 5:00AM - 11:00PM. The building would be equipped with doors that could be opened and shut at the entrance and exit. He said these are typically used more frequently in the winter than in the

summer, but can be used as necessary in the event there are some issues concerning noise, for example.

He said water and sewer service the site. He said Mr. Cronin from Jones & Beach will talk a little bit about water, sewer, and drainage arrangements for this proposal.

He said the diseased and dead trees that exist as well as the dilapidated fence on the west and south sides will be taken out. The existing good vegetation will stay. More vegetation and landscaping will be imposed as will a new 6' stockade fence. These will become site plan details if this goes on to the Planning Board. He said the site plan for this has been fully engineered. It's been fully reviewed by the Staff and the various departments. It is ready for Planning Board action.

Atty. Westgate said he knows there are concerns about noise generated from a car wash, both from the wash and the dryer mechanism in the building as well as outdoor vacuums. He said they have tried to summarize some basic information regarding noise. He said this is the second piece of information in the Board's packet. In essence this shows that Mr. Sancartier took some readings with an appropriate noise meter over a sixteen hour period from 6:00AM - 10:00PM on November 14th. He wanted to get the existing noise from Main Street to get the decibel levels. He said at the sidewalk about 68 ½ decibel levels averaged over that time drops to 61 and then 58 as you go further into the property. He then compared that with what his Newburyport facility generates for noise. With the doors open and the doors shut there are decibel level readings are in the same ballpark as the ambient noise from Main Street generates.

He said they did some comparison with manufacturer's information on the drying mechanism in the car wash as well as the vacuum cleaner outside. He said the vacuum cleaners, because of the nature, are at a much lower decibel level. The dryers are in the same ballpark decibel level reading 50' from the exit.

He said the noise they are taking account of is noise that is either facing out of the entrance area or exit area. It's less noise coming westerly from the proposed building given its orientation. He said he tried to give some

backup information with the noise summary attached to the first summary page.

He said the use is listed as a special exception in the Table of Uses. This is Item #15 of the Retail/Commercial section of the ordinance that covers this particular proposal.

He said the use will not create undue traffic congestion or unduly impair pedestrian safety. He said this is a good project from a traffic perspective. It generates less traffic, by far, than the gas station did and by far fewer than the Dunkin Donuts would have generated. He said Mr. Goldie will explain this to the Board. He said there would be about thirteen arrivals and departures during the peak afternoon hour, an insignificant number given the traffic on Main Street, plus they are eliminating the Main Street curb cuts and using the signalized intersection for access and egress. He said the Traffic Engineering Department favors this arrangement. In the packet is an Email from Wayne Husband, City Traffic Department, indicating that the concept for traffic flows well on this property and that the layout is favorable given that there's no new curb cuts on Main Street and the elimination of existing ones.

Atty. Westgate said they will not overload the public water, drainage, and sewer systems with this project. He said there are letters on both water and sewer in the packet from Pennichuck and from Mr. Lebrun, Deputy City Engineer indicating those utility systems are fully capable of handling this proposal.

He said there are no special regulations for this proposed special exception.

He said this will not impair the integrity or be out of character with the district or immediate neighborhood or detrimental to the health, morals or welfare of the residents of the City. He said this is a dilapidated site and it's in an area that's historically had a number, and still does have, a significant number of automotive uses. It's in the General Business district. He said they are trying to match its historical nature as an automotive service lot. They are trying to put together a building that is not automotive looking from its Main Street perspective. They are trying to come as close to Main

Street as they can for the setback area and take the curb cuts off of Main Street and enter and exit the property from Prospect Avenue.

Atty. Westgate said eliminating a dilapidated structure to allow a productive use is more in character with any neighborhood. There is no value in the structure as it's presently constituted.

- Tape Change -

Mr. Duffy said that he visited a couple of car wash sites that had a lot more space than this site does. His major issue with this site is two lines of cars right next to the property line. He said there's no buffer or calming zone in the area. He said he sees this as being out of character with the neighborhood.

Atty. Westgate said the character of the neighborhood is a broader question than just where the fuel lines are for the proposal. He said he believes the proposals that came before the Board sought to reduce the buffer area between the two zone lines. He knows the Dunkin Donuts proposal did and the Board granted their request.

He said they had two choices. One is to orient the building they way they did, they are keeping the noise away from heading westerly plus they are having the residential character of the building face Main Street. They are also taking the curb cuts away from Main Street. This necessitates coming in off of Prospect Avenue and circulating around and through. He said one element of character of the neighborhood is the location of the building. He said the City wants these building to be close to Main Street and not further set back to keep the pavement behind the buildings.

He said as he understand it, it takes about four or five minutes to go through the wash cycle. He said they effectively have a nine car capacity on two lines, or eighteen cars total. He said he didn't think they are going to see that level of queuing happening because he doesn't think anyone would want to wait 25 or 30 minutes to wash their car. He said people get their cars washed on impulse or when they get a feel for when the lull times are.

Mrs. Douglas asked if there is going to be an attendant on the site during the hours of operation.

Atty. Westgate said this is unattended, other than someone coming on a periodic basis to set things up to re-supply.

Mrs. Douglas asked about the air quality from all the cars that will be queued up and how it would affect the local neighborhood.

Atty. Westgate said there is a traffic light on Main Street. There is a greater level of traffic on Main Street than they will ever generate. In a comparison of relative affects, he doesn't think what they generate from traffic can have any significant impact on whatever air quality already exists in the immediate neighborhood.

He said there are probably going to be far more frequently more people backed up at the traffic lights than would ever back up at the car wash.

Mr. Tremblay asked if the noise levels are additive.

Atty. Westgate said he isn't qualified to answer this question. All he can point out is that the ambient noise levels (the readings that Mr. Sancartier took) were noise from various sources on Main Street.

Mr. Tremblay said from this report he doesn't know if the two bays are functional and the vacuums are all turned on. He asked if all of this is turned on and then compounded with the traffic, what would the noise level be like.

Atty. Westgate said he understands the question, but he's not a noise engineer so he didn't want to speculate on an answer to the question. He said there's more than those sources of noise that go into what's happening presently on Main Street. His guess would be that adding this isn't going to take them from 68 decibels to 78 to 88, for example. He said he will have Mr. Sancartier address this question a little better. He has operated these facilities and is familiar with them. He said his equipment supplier is also present and he may be able to shed better light on it than he can.

Mr. Tremblay said he thinks there is an apartment house behind the facility.

Atty. Westgate confirmed that this is correct.

Mr. Tremblay asked if these people had been spoken to.

Atty. Westgate said they have. He said he believes their counsel is going to speak in opposition.

Mr. Currier said he heard there are going to be doors on the two bays.

Atty. Westgate said this was correct. He said at times the car enters the bay and the front and back doors shut and the wash cycle occurs. The exit door opens and you drive out.

Mr. Currier asked if the doors are open or closed when the dryers are on.

Atty. Westgate said in the typical daily operation the doors are open. In the winter when there is colder weather it's more customary for operators of these facilities to have these doors shut. He said the most likely scenario would be the entrance door shuts and the exit door probably stays open. He said they thought this through because there is also an apartment building on Main Street as well to the south of this site.

Mr. Currier asked where they made up the 15' on the buffer strip. He said he hasn't seen any change in the plan from the one that they received a while ago.

Atty. Westgate said the zone line is not on the property line. It's set back from the property line. He said it's a combination of 10' on the other side of the property line and 15' on theirs. He said this is a change from the original design. He said they re-oriented the building and the flow. He said the City staff has weighed in on this project and with the comments from the Planning side of things they have made changes.

Mr. Currier asked if the staff is okay with the building being up front and meeting the Downtown Master Plan.

Atty. Westgate said he didn't think they have taken a formal position on this. He said he hasn't seen anything in writing concerning this.

Mr. Anderson asked if the bays are soundproof from each other or open to each other.

Atty. Westgate said he has been told there is a wall between the two bays.

Mr. Anderson asked if there was any information available on snow removal.

Atty. Westgate said the snow will be stored where it can be. Like many of the other downtown lots when there is too much snow, it's going to have to be taken off with a bucket loader and truck.

Mr. Anderson asked who would realize that no attendant present.

Atty. Westgate said obviously Mr. Sancartier is going to have to plow when it snows and make all those arrangements. He said Mr. Sancartier isn't going to build this and never see it for a year.

Mrs. Douglas asked the number of vehicles that go through the Newburyport facility. She said she knows that this is three bays, not two, but she would like to have an idea in terms of volume.

Atty. Westgate said an average of 100 a day with three bays. He said they have estimated 100 at the proposed facility to be somewhat consistent.

Mrs. Douglas asked what happens if there are ten or twelve cars queued up and something goes wrong with one of the pieces of equipment. She asked how they are going to get out of the site.

Atty. Westgate said people will have to back up and let themselves out.

SPEAKING IN FAVOR

Robert Cronin, Jones & Beach Engineers, 85 Portsmouth Avenue, Stratham, NH. Mr. Cronin said he is the design engineer for this project. He said it's a pretty simple and straightforward design as far as the drainage goes. He said under the existing conditions, all the drainage flows onto Map 97 Lot 14 & 19 as well as an on-site drainage infrastructure that was left abandoned and in bad shape from the previous use on the Mobil site.

He said they are proposing 35% non-impervious surface. The existing condition has 30% non-impervious surface. All of the new non-impervious surface is reflected in the runoff numbers going to Map 97 Lot 14 & 19. There will be no detrimental runoff effects to the abutting property.

He said the site is going to be graded back to allow all runoff and drip off from the car wash itself to flow back into the bays. There will be a series of catch basins in the bays, which connects to the City sewer system. He said there is also approximately 90 linear feet of drive time for the cars to drive upon exiting the site and that water flows back to a catch basin which is going to be located directly across from the main bay.

He said they are also connecting their drainage infrastructure on-site to an existing catch basin left over from the Mobil site, which means that there would be no construction or dredging across Prospect Avenue.

Mrs. Douglas asked if the actual car wash system is going to take advantage of re-capturing as much as it can in terms of the water.

Mr. Cronin said that is a possibility. He said those designs have not been implemented in the plan at this time. It's been discussed in their office. He said Mr. Sancartier knows more about how that procedure works.

Mr. Currier asked how many gallons of water this unit will use in a day.

Mr. Cronin said those numbers have been submitted to Mr. Lebrun. He said he can dig out the plan and get the number for the Board.

Tim Goldie, P.E., Steven Parnow & Company. Mr. Goldie said they prepared the traffic study for this project. He referred the Board to Page 9 of their report.

He said from a traffic engineering standpoint this is the right design. It eliminates two driveway curb cuts on the higher volume main street. In favor of that, they are constructing one driveway on the lower volume street - Prospect Avenue.

He said the car wash would be expected to generate thirteen trips into the site and thirteen trips out during the afternoon rush hour - the PM peak hour.

He said over a 24-hour period, utilizing the standard trip generation rates, which is published by the Institute of Transportation Engineers, they would estimate 153 cars in and 153 cars out. He said this is different from what the Board heard as to what they are expecting as far as sales. He said they have a business plan to know what number they are expecting. His company is using a standard trip generation rate because that's what the City would want and they have to follow the standard traffic study procedures.

Mr. Goldie said the previous use (the gas station) would be expected to generate 56 in and 56 out during the same afternoon rush hour. A gas station would generate 675 in and 675 out over a 24-hour period. He said the Dunkin Donuts site would have had 61 in and 61 out in the PM peak hour and they would be expected to generate about 1300 in and 1300 out over a 24-hour period. He said there was also a proposal for an office/coffee shop/florist for the site. This would have generated 27 in and 28 out during the PM peak hour and 639 in and 639 out over a 24-hour period.

Mr. Duffy asked Mr. Goldie if he had done the traffic engineering study for the Clipper City Car Wash.

Mr. Goldie said he did not.

He said the traffic expected to be generated by the proposed car wash will increase the traffic on Main Street by a fraction of 1%. He said they've taken no credit for the fact that there is an existing use that could go back into business. The numbers they have used in their analysis are very conservative.

Mr. Goldie said the signalized intersection of Main Street/Prospect will operate below capacity through the year 2015. He said they saw no change in what they call the volume to capacity ratio where they always see some level of change. In this case the ratio didn't change at all.

He said in completing the traffic impact threshold worksheets, the car wash does not meet any of the warrants.

Mr. Tremblay said when traveling north to south, people would just make a right turn into the site. He asked if they know how many cars currently make that right turn onto Prospect Avenue.

Mr. Goldie said as it exists today there are two vehicles that make the right turn from Main Street to Prospect in the peak PM and Saturday hours (4:30PM - 5:30PM).

Mr. Tremblay asked how many they would expect with this new project.

Mr. Goldie said there would be eight.

Mr. Tremblay asked about how many vehicles traveling south to north make the left turn today and how many would be doing it under the proposed site.

Mr. Goldie said one today and six with the car wash.

Mr. Tremblay asked if the traffic light would need to be reconfigured.

Mr. Goldie said it will not.

Mr. Tremblay asked Mr. Goldie if they had measured the impact on traffic flows on those people waiting to make a left turn.

Mr. Goldie said they have. He said they always see some change when they do the level of service or capacity analysis. As he mentioned earlier, they don't see any change of level of service, but they don't see any change in the delay in the number of seconds or the volume to capacity ratio. The numbers are so small that there's absolutely no change.

Frank DeTamaso, Carwash Services, 193 Walton Road, Seabrook, NH. Mr. DeTamaso said in relationship to noise, whether there is on bay running or two bays running, noise does not compound. If there is noise out on the road, it's what is called an ambient level. If the noise is around 70 decibels, something else running at 60 or 70 doesn't add to the 70 that's current. He said what's around the area in terms of vegetation, fences, etc. will reduce noise as you get away from the noise generator.

He said in relationship to doors, the carwash will operate with the doors closed (correcting the attorney's statement).

He said when the machine fails or has a problem, two things happen. The doors will open so that if there's somebody in the bay it lets them out. It will also create a passageway for everybody else who is in line. He said a lot of times if it's customer error, the machine will reset itself after the bay clears. If it can't reset itself for some other reason, the doors open and would remain in that position. It would page the attendant. He said they plan to hire an attendant from the neighborhood that would have the pager. When he or she is not there they can be paged when there's a problem. He said the site will also have a camera system so it can be monitored from anywhere there is Internet access.

He said they will be recycling the water. He said the City wrote a letter stating that they can handle up to sixty gallons per minute. He said they only plan to use forty gallons per car. This is in a 4 - 5 minute time frame. They'll be recycling the difference.

Mr. Duffy asked Mr. DeTamaso the size and depth of the lot of the carwash that is shown in the picture that was presented to the Board. He asked if it was larger than 19,700 square feet and greater than 140' lot depth.

Mr. DeTamaso said it is. He said there is room for future expansion for the property in the picture. He said Mr. Sancartier owns that facility and owns another carwash in Newburyport that is smaller.

Mr. Tremblay asked how many times they have had to have the doors open automatically because of equipment failure.

Mr. DeTamaso said he didn't know. He said he sells and services the equipment and provides monthly preventative maintenance.

Mr. Currier said Mr. DeTamaso mentioned the design of the carwash and a treadle. He said does this carwash pull the car through or if you drive in and wait for the process to begin.

Mr. DeTamaso said they call this a park and wash. You drive into the bay. The lights direct you in and tell you when to stop. You just sit there and the machine goes back and forth.

Mr. Currier said before the machine starts is when the doors close and the wash and dry occurs and then the doors open.

Mr. DeTamaso said normally the doors to the carwash are open in the summer. If the doors are down, you put your money into the auto teller, it accepts the money and the entrance door will open and let you into the bay. Once you get into position and the light says stop, the door will come down. It will then wash and dry the car. Then the exit door will open and let you out of the carwash. Once they clear the photo eyes, the exit door will close behind you.

SPEAKING IN OPPOSITION

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said he is the trustee of a large multi-family property (he showed the location) as well as another multi-family on Prospect Avenue in the rear.

He said he appreciates the fact that the applicant is centering the building on Main Street. Unfortunately the tenants in the building (he showed where) are going to be getting the doors opening as well as all of the cars parking and waiting.

He said besides the noise from the tunnels he is concerned over the noise of what he calls the "boom box" effect in the pickup trucks, etc. that are waiting and playing their loud music. He's concerned that the doors are open in the

summer time when most people have their windows open trying to enjoy the air.

He is also concerned with the traffic because everything is coming out onto Prospect Avenue. It will interfere with the traffic that exists in this particular area.

Mr. Duffy asked for Atty. Prunier's comments on the two queues of vehicles that would be in the buffer area.

Atty. Prunier said this is not amenable because this is a five minute cycle so cars are going to be sitting there at least five minutes. He said there are people who are going to have their loud music on while they are waiting, besides the exhaust fumes that will be created.

Mr. Currier said the service station that was at the site was pretty busy. He asked if Atty. Prunier felt this was a less intensive use than the carwash.

Atty. Prunier said with the service station people used the Main Street exits, not Prospect Avenue. Also, when your gas is being pumped your car engine is off so you don't get the loud noises that would be created by the carwash. He said this is the wrong place for a carwash.

Mr. Currier said that often times the Board has placed a stipulation that there be signs that state there be no idling engines when there is a parking lot near residences. He said if there is a 4 - 5 minute cycle time this is something that might be appropriate for this operation as well as a sign that states radios be turned off.

Atty. Prunier said if there is an attendant on the site, then the attendant could tell them to turn their radio off or turn it down, but there isn't going to be an attendant on the site.

Rosemarie Weival ???, 273 Main Street. Mrs. Weival said a lot of the residents rent and they didn't receive any notification of this project.

She said this area is zoned for different commercial businesses. They lost the building next to them because Walgreens is going to be built. She said they are already concerned about the noise factor that will be created from

the drive-through pharmacy, cars turning. Etc. She said she doesn't know how many times she's almost been hit because she's trying to make a left turn into where she lives. This is going to create more traffic, but the biggest thing is going to be the noise.

She said the City has spent a lot of money and time bringing up the downtown area and she doesn't feel that a carwash really fits. She said all of them thought that the medical building was going to be approved. It would have been a quiet business with some daytime traffic. She asked that this request be denied and keep the appearance of what the City is trying to do on Main Street.

Paul Carpenter, Owner - 271 Main Street. Mr. Carpenter said the site had been a gas station for years. He said he has a problem about the Dunkin Donuts that was mentioned. He said he's always received a certified letter when there has been a Zoning Board or Planning Board meeting when there has been something going on with the site. He said this never happened. He said there might have been some studies for Dunkin Donuts, but they never approached the Board.

Mr. Duffy said they are talking about a carwash tonight.

Mr. Carpenter said they have referred to the fact that a Dunkin Donuts would be far much worse than this proposal. He said it shouldn't even be a consideration.

He said the property he owns has been in his family for fifty years. He said they have put up with everything that's gone through here. He said they had planned on putting in a medical building with parking and that seemed to be a very good use.

He said there are apartments and houses in the area. He pointed these out on the plan. He said they would all be affected by the carwash. He said his main complaint is the noise that would be created.

Mr. Duffy asked Mr. Carpenter if there are other automotive type uses in the area that have any queues like this.

Mr. Carpenter said "no."

Mr. Currier asked if they had a choice between a carwash and an eight pump gas station, which would be the less intensive for him and his family.

Mr. Carpenter said he believes the gas station is less intense of a use. He said they were entering and exiting off of Main Street and there was no idling going on and there weren't machines running all the time. Pumping gas doesn't make noise. It's going to be as noisy as the patrons are.

Mr. Currier asked if, as an abutter, he preferred the entrances off and on Main Street.

Mr. Carpenter said he's not on the Prospect Avenue side. He is saying that the noise from the cars and the exhaust created by waiting vehicles and there being no attendant on the site are issues.

Bradley Whitney, 38 Fifield Street. Mr. Whitney said he owns the property directly across Main Street (he pointed this property out). He said there has been an oil spill on the site and at least five test wells, if not seven test wells are on the site. Two of the test wells are on the sidewalk next to his property. He said they had wanted to put these test wells on his property, but they wanted him to be responsible if anything happened to their people on his property. He did not agree to this.

He asked if the construction is going to alter the testing of the wells that they are monitoring continually. He asked whether or not they are going to disturb those test wells and whether they are going to remove the contaminated dirt and put in clean fill.

He said as far as the noise level is concerned, he remembers there was a "quiet zone" around the hospital. He said he recalls that because it was beneficial to him in purchasing the property, which was going to be a Phillips 66 station. That would have created a lot of noise because they did a lot of repairs in those days. He asked if the "quiet zone" is still on the books, and if so, is the lower decibel level lower in a "quiet zone."

Mr. Whitney said he spoke to builders who are constructing a car wash on Route 125 and Route 101 that recaptures the

water. He said there were numerous underground tanks, which would also affect any fuel spill. He said he didn't know whether the carwashes on Harbor Avenue & East Hollis and on Lake & Main have underground tanks for reclaiming the water.

Mr. Currier asked when the oil spill occurred and how much was spilled.

Mr. Whitney said he gets the reports from the Geodetic Environmental Service Company that are doing the tests for the State of New Hampshire. He said he couldn't tell the Board when the spill happened - he thought it was over a period of time. He said he believes the monitoring will continue until July 2007.

Scott Cote, Property Management Director, Southern New Hampshire Medical Center, 8 Prospect Street, Nashua, NH.
Mr. Cote said it's unusual for the medical center to take a position either way on a project, but they feel this is important enough to speak in opposition to this project.

He said they believe strongly that the project is out of character with this area, and most importantly, out of the changing character of the area and what's occurring on Main Street. He said they believe this project is not consistent with the redevelopment efforts of the Downtown that have been going on for a period of time. He said they believe it is not consistent with the Downtown Master Plan that was passed by the Board of Aldermen two years ago.

He said the project is not a permitted use under the recently approved zoning ordinances passed by the Board of Aldermen just three weeks ago.

Mr. Cote said they believe this project will negatively impact future redevelopment of the downtown area if it's approved. He said they believe it will negatively impact the traffic in the area. He said they believe it will negatively impact the pedestrian traffic in the area as well.

He said it's difficult to understand how this project will have a positive impact on the community. He said last year an office building was proposed last year for this site and approved. It met all the appropriate use and concerns that

he just identified. He said a project can be found for this site that will be for the betterment of the downtown and the greater interest of the community. This is not the right one.

Mr. Currier asked Mr. Cote if he would prefer a carwash or an eight pump filling station.

Mr. Cote said what they are discussing is a carwash and he thinks that a carwash is inappropriate for the site.

Mr. Currier said he asked the question because he felt that a carwash is less intrusive than a filling station.

SPEAKING IN FAVOR - REBUTTAL

Atty. Westgate said on April 10, 2001 the Zoning Board granted a special exception for a Dunkin Donuts on this site. It was an official approval that was sought through the Board.

He said Mr. Whitney brought up the issue of contamination. He put it in the context of an oil spill. He said Mr. Sencartier's arrangement with Exxon Mobil Oil Corporation is that they are the ones that are living with that issue. He said no foundation is being proposed for this building. There are three - 1500 gallon tanks that will be not far below surface for the recycling water. There's not substantial subsurface work. If there is any, it has to be done with that in mind.

He said the noise issue is only one element of the character of the neighborhood question. One of the five criteria for the granting of the special exception is not that it won't be noisier than it's neighbors. The criteria is if the use impairs the character of the neighborhood or if it's out of character with the neighborhood.

He said Atty. Prunier's client's primary concern is the apartment building on Main Street. He said this apartment is in the General Business District so if anything is out of character with the neighborhood it's the continuation of residential uses on Main Street in the General Business District, not new commercial uses that are consistent with multiple automotive based uses on this section of Main Street.

He said this site has had a gas or service station on it for forty years or so. How another automotive use on a site that was a service station can be out of character puzzles him. He said they've oriented the building to try to keep their impact on the character in that zone. That's why everything they're doing is on a north/south orientation, not an east/west orientation. That's where the noise factor comes in.

Atty. Westgate said the ambient noise on Main Street is not significantly different than the noise that would be generated by the facility. The door mechanism further reduces the noise factor. He said if this were a commercial use that had a ninety or a hundred decibel level noise generation that would be different.

He said the queue lines and the car stacking are also in the commercial zone. It's a question of relative impact. The Dunkin Donuts and the service station proposals both generate significantly greater traffic than the carwash. He said it's probably as low intense of a traffic generator as an automotive type use imposed. He said as Mr. Goldie indicated there is no impact on service at the signalized intersection.

He said he didn't have any information to give the Board on the comment made by Mr. Whitney about the "quiet zone."

He said the Downtown Master Plan contemplated a ten year time frame by which this section of Main Street would change. He said it's not going to happen unless on-street parking is created at this end of Main Street. Without on-street parking it's not going to be a pedestrian friendly area. He said the Master Plan itself says this. This area is developed with car-oriented uses, evidenced by the shopping plaza, the Walgreens, the Shell with the car wash and the parking lot that the hospital built about a year or less ago.

Mr. Currier said he came to the meeting tonight thinking that this was a less intensive use than the service station. They have taken a lot of testimony from people who think the other way.

He said one thing that can be ominous is an unattended car wash. He asked what their feeling is on having an attendant on site during the operation of the carwash.

Atty. Westgate conferred with Mr. Sancartier. He said the general operation would stay automated, not with an attendant. He said Mr. Sancartier has stated that during peak times, usually the weekend days, an attendant can be on site if that is an important element for the Board's approval.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Tremblay said the noise level really bothers him. He thinks that it's going to be a huge intrusion for the residents. He also thinks that the people who are walking on the sidewalk would find it hard to have a conversation because of any carwash that would be there. He said the whole thing gets compounded with the noise and pollution. The houses there are very close to this facility.

Mr. Anderson said the queuing really bothers him. He is thinking about the noise from the waiting vehicles and the exhaust. He said he didn't think it would take many trips before you start to see more than three or four cars there and don't get in line. You aren't going to wait twenty minutes for a carwash that only admits one car at a time. It may mitigate itself to some extent.

Mr. Currier said he remembers when the Mobil station was up and running. He said the proposed entrance off of Prospect Avenue is a benefit. Pedestrians were at risk when there were people waiting to make left turns into the filling station so when they got a break in the traffic they would go for it.

He said he believes everyone was favorable to the Prospect Avenue entrance when the office building came with their request because it minimized the curb cuts on Main Street.

He said he came thinking that this was a less intensive use, but the queuing is a concern. He said having an attendant on site during peak hours goes a long way to

mitigate that. He would like to hear what others have to say.

Mrs. Douglas said she could not support the request. She said she is concerned about the noise and the air quality as well as the overloading of Prospect Avenue.

Mr. Duffy said he feels that way himself. He said it's out of character to the Master Plan or to the neighborhood. Other less intensive uses may have been proposed for the site. He said if he owned or rented here he would feel that it was out of character of the makeup of the neighborhood, even though there are multiple uses. He said he understands the automotive uses at the other sites, but he didn't see them as queuing sites.

Mr. Currier said he finds it interesting that just down the street there are a couple of new parking lots for the hospital and there people who live next to that saying they didn't want idling cars. The Board stipulated signs. Another parking lot came before the Board and there were no complaints that those signs for turning off the engines weren't working.

Mr. Tremblay said that the comparison of the carwash to a parking lot is not a good comparison. You go to a parking lot for a whole different purpose than you do for a carwash. Even if the actual washing of a car is tolerable there will be vacuum cleaners operating. He said it's a whole different operation.

Mr. Anderson said he wouldn't think that signage to turn off your engine would be very effective when you have to start your vehicle again to move up the queue line every four or five minutes.

MOTION by Mr. Duffy to deny the special exception to allow a 2-bay automatic car wash with exterior car vacuums at 267 Main Street. It is listed in the Table of Uses, Section 16-227, Retail Service Commercial #15. The car wash will impair the integrity and be out of character with the neighborhood. The queuing and noise levels of the area would be out of character to similar uses that exist in this area, including the potential air quality differentiation may exist to other uses on the site as enjoyed over the years.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

3. **Andreas Nikitas (Owner) 9 Simon Street (Sheet 87 Lot 307) requesting variance to encroach 7' into the 10' rear yard setback to construct a 7'X14' walk-in cooler addition. GB Zone.**

Richard Maynard, Professional Engineer, Maynard & Paquette.
Mr. Maynard said he is representing the applicant, Andy Nikitas, owner of 9 Simon Street - the Sunset Restaurant. He said the restaurant has been open for approximately seven years and been well received by the general public.

He said his client finds that he needs more refrigeration space and would like to add a 7'X14' walk in cooler to the rear of his building as indicated on the site plan.

He said to the south of the site is an auto repair garage. Across Simon Street is the StYlianos Irrigation business and the B&M Railroad right-of-way property. Across Will Street is Bronzecraft and Pennichuck Water Works operations. Behind this building is the former B&M Railroad, now the City of Nashua's rail trail. He said the walking path joins Will Street roughly 100' away from the building. Diagonally, across George Street, there is a residence at 4 George Street.

Mr. Maynard said he has spoken to the owner of 4 George Street, Raymond Boule, and he has no objection to the cooler addition. His only concern is that the fence along the George Street area behind the restaurant remain in place.

Mr. Duffy asked Mr. Maynard if the area variance being requested is a reasonable one and minor considering the special conditions of the property and the adjoining parcels.

Mr. Maynard said "especially so."

Mr. Duffy asked Mr. Maynard if it is within the ordinance since it's a very minor and reasonable use.